IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 649 OF 2005
WITH
CRIMINAL APPEAL NO. 695 OF 2005
ALONGWITH
CRIMINAL APPLICATION NO. 650 OF 2005
WITH
CRIMINAL APPEAL NO. 696 OF 2005
ALONGWITH
CRIMINAL APPLICATION NO. 651 OF 2005
WITH
CRIMINAL APPEAL NO. 697 OF 2005

The Motor & General Finance Ltd. ...Applicant/ Appellant

Versus

M/s. Gurukrupa Cargo & Ors ...Respondents

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Mr. A.S. Khandeparkar, Advocate for Applicant/ Appellant.

Mr. R.R. Sharma, Advocate for Respondent No.1.

Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED OF RESERVING THE ORDER : 08.07.2005

DATE OF PRONOUNCING THE ORDER : 22.07.2005

P. C.:-

1. Heard both sides

2. Leave to appeal is granted.

3. Appeals are admitted.

4. In each of these matters, the appellant i.e. original complainant had filed a complaint against the respondent i.e. original accused for the offence under Section 138 r.w. 141 of Negotiable Instruments Act. The said complaints were filed before the learned Additional Chief Metropolitan Magistrate, 20th Court Esplanade Mumbai. The said complaints are numbered as 202 of 2003, 203 of 2003 and 1244 of 2003. The Criminal Appeal and Application therein being No. 649 of 2005 pertains to complaint No. 202 of 2003, the Criminal Appeal and Application therein being No. 650 of 2005 pertains to complaint No. 203 of 2003 and the Criminal Appeal and Application therein being No. 651 of 2005 pertains to complaint No. 1244 of 2003.

5. In all the said cases plea was recorded and the accused pleaded not guilty of the said charge. By order dated 21.12.2004 the learned Magistrate dismissed the complaint for want of evidence and acquitted the respondents i.e. original accused Nos. 1 and 2 for the offence under Section 138 of Negotiable Instruments Act. Being aggrieved by the said order, these appeals have been preferred by the complainant.

6. The learned advocate for the appellant has submitted that on 20.12.2004 the father of the advocate conducting the matter, had been hospitalised and he was to be operated on 21.12.2004 hence, on 21.12.2004 in each of three cases, an application for adjournment came to be preferred before the learned Magistrate wherein these facts were stated and it was clearly stated that the surgery of the father of the advocate who was appearing for the complainant, is fixed on that day and hence, he is unable to appear before the Court. However, all the three applications for adjournment came to be rejected and the learned Magistrate passed the impugned order dated 21.12.2004. The learned advocate for the complainant has submitted that looking to the fact that the father of the advocate was to be operated on 21.12.2004, the learned Magistrate could have granted a short adjournment and ought not to have dismissed the complaint on that day.

7. Mr. Sharma, the learned advocate for the respondent i.e. original accused on the other hand has submitted that on 26.10.2004 the advocate for the complainant had prayed for time to file evidence in all the three cases. The learned Magistrate granted time and observed that in future no such adjournment would be granted and if he fails to file the evidence on the next date the complaint would be dismissed.

Mr. Sharma has submitted that the said order was passed on 26.10.2004 and the matter was adjourned to 21.12.2004. He has submitted that the advocate had sufficient time to file the evidence and the evidence could have been filed even in absence of the advocate for the complainant.

8. It is true that on 26.10.2004 the learned Magistrate had indicated that no further time would be granted to file evidence and if the evidence is not filed on the next date the complaint would be dismissed. However, looking to the peculiar facts of this case the applications for adjournment came to be preferred. It is to be noted that in all the three applications the same reason has been given. The genuineness of the reason given in the adjournment application is not doubted or disputed by the respondent. It is pertinent to note that in the complaint pertaining to application No. 650 of 2005 the advocate for the respondent i.e. original accused has stated in the adjournment application that he has no objection to the said application being granted. However, in other two matters objection has been raised though the reason given therein is the same. The facts pertaining to all the matters are similar and the date granted in the said matters are also same and the reason sought for adjournment is also same. However, in one matter the

respondents have not objected to the adjournment and in the other two matters the respondents have raised objection. Despite the fact that the respondent had not objected to the adjournment being granted in the matter relating to application No.650 of 2005, the said complaint also came to be dismissed. No doubt, the advocate for the complainant was not present, however, the complainant was present on 21.12.2004 alongwith holding advocate. Looking to the peculiar facts and circumstances of this case and looking to the fact that the respondents have given no objection in one out of three matters and the reason given in all the three cases was the same, I am of the opinion that the learned Magistrate ought to have granted one chance to the complainant to file his evidence.

9. It is true that the earlier order is dated 26.10.2004, however, the learned advocate for the complainant would not know in advance that his father would be required to be operated on 21.12.2004. Thus, in such case it may not have been possible for him to prepare the evidence in advance and file it.

10. Looking to the peculiar facts and circumstances of this case the learned Magistrate ought to have granted one chance to the complainant to file his evidence and ought not to have dismissed the complaint. The Magistrate always has discretion

wherein he can dismiss the complaint, however, he is expected to take stock of the whole situation before he uses his discretion and decide the course to be followed. When there are various options available with the Magistrate, it is necessary that the option which the Magistrate adopts should be exercised judiciously and to advance the cause of justice.

11. Looking to the peculiar facts and circumstances of this case i.e. the reasons given for the adjournment, the genuineness of which is not disputed by the respondent, the learned Magistrate ought to have granted one last chance to the complainant and ought not to have dismissed the complaint. Thus, in this view of the matter, the order of the learned Magistrate dated 21.12.2004 is quashed and set aside. The complaints are restored to file.

12. Criminal applications and appeals are disposed of accordingly.

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